

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case Nos. A-5982, A-5983, A-5984, & A-5994  
APPEAL OF DONALD MCGEE, MCGEE ENTERPRISES, AND GREENTREE  
ASSOCIATES L.L.C.**

**OPINION OF THE BOARD**

(Hearings held June 9, July 13, 2004 and July 14, 2004. Original Opinion  
issued February 1, 2005. Revised Opinion issued pursuant to  
the March 9, 2009, Order of the Circuit Court for Montgomery County.)  
(Effective Date of Opinion: April 24, 2009)

Case No. A-5982 is an administrative appeal filed by Donald McGee charging error on the part of the County's Department of Permitting Services ("DPS") in issuing a Notice of Violation dated March 12, 2004, for conducting retail sales in a residential zone on the property located at 8804 Old Georgetown Road, Bethesda, Maryland 20814 (the "Property").

Case No. A-5983 is an administrative appeal filed by Donald McGee charging error on the part of the County's Department of Permitting Services ("DPS") in issuing a Notice of Violation dated March 12, 2004, for offering to sell goods or services without a Montgomery County vendor license on the Property.

Case No. A-5984 is an administrative appeal filed by Greentree Associates, L.L.C., charging error on the part of the County's Department of Permitting Services ("DPS") in issuing a Notice of Violation dated March 30, 2004, for the extension of a nonconforming use at the Property.

Case No. A-5994 is an administrative appeal filed by Donald McGee, McGee Enterprises, d/b/a Salt River Lobster, charging error on the part of the County's Department of Permitting Services ("DPS") in issuing a letter dated May 3, 2004, denying a vendors license for the sale of seafood in a residential zone at the Property.

Pursuant to Rule 1.7 of the Board of Appeals Rules of Procedure, the Board consolidated the four cases. For the purposes of this Opinion, Donald McGee, Greentree Associates, L.L.C., and McGee Enterprises may be referred to collectively as the "Appellants."

Pursuant to Section 59-A-4.4 of the Montgomery County Zoning Ordinance, codified as Chapter 59 of the Montgomery County Code (the "Zoning Ordinance"), the Board held a public hearing on the appeals on June 9, July 13, and July 14, 2004. Stephen J. Orens, Esquire, and Kinley R. Dumas, Esquire, represented the Appellants. Assistant County Attorney Malcolm Spicer represented DPS. Norman G. Knopf, Esquire, represented Michael and Shari Wohl and the Huntington Terrace Citizens Association, who intervened in the cases. On February 1, 2005, the Board issued a decision denying all four of these appeals.

The Appellants filed a Petition for Judicial Review of the Board's decision with the Circuit Court. The Circuit Court held oral argument in this case on January 15, 2009, and on March 9, 2009, entered an Order reversing the Board's decision in Case Nos. A-5982 and A-5984, and reversing and remanding to the Board its decisions in Case Nos. A-5983 and A-5994 for further action consistent with the Court's opinion.

Per the Order of the Circuit Court, the Board hereby reverses its decision of February 1, 2005, and GRANTS the appeals in Case Nos. A-5982 and A-5984. With respect to Case Nos. A-5983 and A-5994, the Board notes that in reversing the Board's decision in Case No. A-5984, the Circuit Court found that outdoor retail sales are not prohibited on the Property. Thus, in accordance with the Circuit Court Order, the Board hereby GRANTS the appeals in Case Nos. A-5983 and A-5994, and remands these cases back to DPS for further action consistent with this Opinion and with the Order of the Circuit Court.

On a motion by Member Stanley B. Boyd, seconded by Carolyn J. Shawaker, with Chair Catherine G. Titus, Vice Chair David K. Perdue, and Member Walter S. Booth in agreement, the Board voted 5 to 0 to open the record in this case to receive the Order of the Circuit Court, and to adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

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Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 24<sup>th</sup> day of April, 2009.

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Katherine Freeman  
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.